

RUTH ELOISE BROWN

IBLA 81-270

Decided December 18, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-20161-D.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee

must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due. Late payment is not justified by illness or other reasons, unless a lessee demonstrates that they were causative factors for delay in immediate proximity to the anniversary date of the lease.

APPEARANCES: Ruth Eloise Brown, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ruth Eloise Brown has appealed from the January 2, 1980, decision of the Utah State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease U-20161-D. The decision determined that the lease had automatically terminated by operation of law for failure to submit timely the annual rental. The State Office further determined that appellant had not exercised reasonable diligence in making timely payment nor had she shown that the delay in payment was justifiable.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was paid timely. 43 CFR 1821.2-2(d), (f); Overthrust Oil & Gas Corp., 52 IBLA 119, 88 I.D. 38 (1981). Because appellant's rental payment was not received on November 1, 1980, the due date, her lease terminated automatically. A terminated lease can be reinstated only if, among other requirements, the lessee shows her failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant states that her calendar says that she mailed the check on October 26, 1980. ^{1/} Nevertheless, the record shows her check arrived in an envelope bearing a November 12, 1980, postmark. The decision below noted that the check was dated November 1, 1980. The postmark date is presumed to be the date of mailing in the absence of satisfactory corroborating evidence that mailing occurred

^{1/} In her petition for reconsideration, appellant claimed that she had mailed the rental payment on Oct. 16.

earlier. Margaret Lee Pirtle, 54 IBLA 113 (1981). Appellant has submitted no evidence to corroborate that the letter was mailed prior to the date postmarked.

[3] For the late submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981). Appellant states that she did not receive the courtesy notice that the rental was due. The case file shows that the notice was sent to her last address of record in Mooseheart, Illinois, but was returned by the post office as unforwardable. Appellant had not informed BLM of the change of address. The Board has repeatedly held that failure to receive a courtesy notice does not justify late payment of the rental. E.g., William A. Klug, 43 IBLA 255 (1979).

Appellant mentions that in the past summer she was very ill and was recovering from surgery and posted her letter in the local mailbox. She also mentions that in the first week of October, a "heinous murder" was committed in her neighborhood and that everyone was afraid to leave his apartment "as the murderer was in this area." These reasons do not appear to be causative factors in appellant's failure to exercise reasonable diligence, nor does appellant show that they occurred with immediate proximity to the anniversary date sufficient for us to reach a determination that late payment was justified. See Louis Samuel, 8 IBLA 268 (1972); see also Mrs. Charles H. Blake, 20 IBLA 322 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

